and loan association will not be allowed to apply to his debt the amount paid as dues, but must take such dividends as on final settlement all the stockholders are found to be entitled to; but where the association is solvent all payments made are to be credited on the debt.

It was further held that where a going building and loan association consolidated with another, forming a new association, which issued new stock to and accepted a new note from a borrowing member of the old association, and afterwards became insolvent, the borrowing member was not entitled to have credited as payments on the loan amounts paid to the old association as dues.

CRIMINAL LAW—ATTEMPT TO COMMIT ABORTION—CF. SECS. 3670, 3888, VA. CODE 1904.—In *People* v. *Conrad*, decided by the Appellate division of the Supreme Court of New York, March, 1905, the following is the syllabus:

"Where the defendant was not a passive instrument in the hands of the entrapping parties, but did the act with which he was charged voluntarily, with full knowledge of the subject and of the consequences which would flow therefrom, *Held* that setting a trap was no defense (following *People etc.* v. *Mills*, 91 App. Div. 331, affirmed on appeal 178 N. Y. 274).

The evidence showed that the defendant agreed to perform an abortion upon a woman for $125, $100 for himself and $25 for the nurse; that subsequently he sent the nurse to the woman's house; that the nurse made necessary preliminary arrangements for the operation; that the defendant thereafter arrived, carrying a satchel containing his surgical implements. It was shown that these instruments could be used to produce an abortion. It appeared that the defendant thereupon received in advance $125 in marked bills; that he thereupon produced and laid his instruments upon a chair; strapped the patient upon the operating table; sterilized his instruments and hands, and proceeded to use a syringe for cleaning the person of the woman; that he then took in his hands a speculum which was used for the purpose of enlarging the vagina and enabling the operator to obtain a view of the womb, and with this speculum in his hand, turned toward the woman. At this stage of the proceeding the woman uttered a cry, and detectives, who were in hiding in the adjoining room, entered and placed the defendant under arrest. *Held* that these overt acts tended but failed to effect an abortion within the meaning of section 34 of the Penal Code, and that the defendant was properly convicted of an attempt to commit the crime of abortion (following *People, etc.* v. *Sullivan*, 173 N. Y. 122, and *People, etc.* v. *Mills*, *supra*).

The doctrine that in order to constitute an attempt, the overt act need not be the final one towards the completion of the offense and of such a character that, unless it had been interrupted, the offense itself would have been committed (as laid down in the Sullivan case, *supra*), reiterated and applied.

The doctrine that, in attempt cases, the test is the condition of the actor's mind and his conduct in the attempted consummation of his design (as laid down in the Sullivan and Mills case *supra*), reiterated and applied."

Sec. 34 of the Penal Code of New York is substantially the same as sec. 3670, Va. Code 1904.

Under sec. 3888, Va. Code 1904, defining the punishments for attempted

crimes in Virginia, it has been held, with the principal case, that the overt act, composing one of the two essential elements of an attempt, need not be the last proximate act prior to the consummation of the felony attempted to be perpetrated. *Uhl's Case*, 6 Gratt. 706; *Glover's Case*, 86 Va. 382, 10 S. E. 420. As to the intent with which the act must be done, see *Hick's Case*, 86 Va. 225, 9 S. E. 1024, 19 Am. St. Rep. 891; and notes to sec. 3888, Va. Code 1904. See, also, 6 Va. Law Reg. 120. C. B. G.

BANKRUPTCY—STATUTORY LIEN—FILED AFTER DEBTOR'S ADJUDICATION AS A BANKRUPT.—A statutory lien, filed within the time prescribed by the statute, is protected if otherwise valid, although not filed until after the debtor's adjudication as a bankrupt. *In re Lillington Lumber Co.*, 13 Am. B. R. 153. See, also, *Fehling* v. *Goings*, 13 Am. B. R. 154; *Crane* v. *Smythe*, 11 Am. B. R. 747; *Matter of Roeber*, 9 id. 778; *In re Mero*, 12 id. 171.

BANKRUPTCY—EFFECT OF DISCHARGE UPON AN ASSIGNMENT OF WAGES MADE PRIOR TO ADJUDICATION AS BANKRUPT.—The right to enforce an assignment of wages to be earned in the future, made by the assignor prior to his adjudication as a bankrupt, is not affected by his discharge in bankruptcy. *Mallin* v. *Wenham*, 13 Am. B. R. 210.

BANKRUPTCY—EFFECT OF DEATH OF ALLEGED BANKRUPT ON PROCEEDINGS.—Proceedings in bankruptcy do not abate upon the death of the alleged bankrupt, after the petition is filed and before adjudication. *Matter of Spalding*, 13 Am. B. R. 223.

BANKRUPTCY—CLAIM AGAINST CORPORATION FOR CONTRACT WHICH WAS ULTRA VIRES NOT PROVABLE.—A corporation organized to buy and sell lumber at wholesale and retail, and all other manufactured building material, is not authorized to guarantee the completion of a building contract by one to whom it expects to furnish lumber; such a contract, if entered into, is *ultra vires*, and a claim based thereon is not provable against its estate in bankruptcy by the owner of the building on the contractor's default. *In re Smith Lumber Co.*, 13 Am. B. R. 118.

CONTEMPT—PUBLICATION CONCERNING TERMINATED CAUSE—CRITICISM OF A VA. CASE.—The *Columbia Law Review* for March, 1905 (5 C. L. R., p. 249), contains the following editorial note:

"The defendant had been convicted on a criminal prosecution. After judgment rendered and payment of fine by the defendant, he published in a newspaper an article charging that the indictments were found under the influence of the judge, and that he was actuated by vicious motives in the conduct of the case. *Held*, that the defendant was guilty of contempt. (*Burdett* v. *Commonwealth*, Va. 1904, 48 S. E. 878.)

"As the origin of the offense of criminal contempt lay in the fiction that the king in the person of his judges presided over the Courts of Westminster (*Neel* v. *State*, 1849, 9 Ark. 259, 264), and that contemptuous conduct toward them was a mild